IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. RONALD GEORGE DICKINSON, Appellant.	No. 37863-9-II UNPUBLISHED OPINION

Hunt, J. — Ronald Dickinson appeals his stipulated-facts bench-trial conviction for manufacturing marijuana and second degree unlawful possession of a firearm, entered after the trial court denied his motion to suppress evidence seized following a warrantless search of his home. He argues that the trial court should have granted his CrR 3.6 motion to suppress because (1) the facts did not support a community caretaking exception to the warrant requirement, and (2) the police officers did not use the least intrusive means possible when searching his home. Holding that the trial court did not err, we affirm.[1]

FACTS

I. Incident

On October 10, 2007, at about 1:00 am, Jefferson County Sheriff's officers responded to a disturbance at Ronald Dickinson's home. The dispatcher had informed them that the reporting party heard someone screaming at Dickinson's home, a gunshot, more screaming, another gunshot, and then silence. The dispatcher also informed the officers that Dickinson, the

[1] A commissioner of this court initially considered Dickinson's appeal as a motion on the merits under RAP 18.14, but he later transferred it to a panel of judges.

homeowner, was a convicted felon.

The officers parked their vehicles down the road, approached Dickinson's house on foot, and positioned themselves around the house. Sergeant Andrew Pernsteiner knocked, announced police presence, and instructed whoever was home to come out with hands up. When a light came on at the east side of the house, Deputy Donald Johnson saw Dickinson emerge from the basement with a firearm and shouted a warning to the other officers about the firearm. The officers retreated for cover.

Dickinson emerged from the house and shouted to the officers, "F[***] you. Go away." Sergeant Pernsteiner ordered Dickinson to drop the weapon. Dickinson did not comply and instead went back into the house. Sergeant Pernsteiner again advised Dickinson that they were law enforcement and ordered him to come out with his hands up. Dickinson refused, ordered the officers to show themselves,[2] and advised the officers that he was going to call 911. Sergeant Pernsteiner encouraged him to do so because the dispatch would confirm that they were law enforcement.

Dickinson eventually came outside without his weapon, and Detective Mark Apeland placed him in handcuffs. Dickinson denied that an altercation had occurred or that he had fired his shotgun. He claimed that he had thrown rocks at a piece of tin next to his house.

Dickinson told the officers that he did not want them searching his house; but Sergeant Pernsteiner informed Dickinson that he was not going to negotiate. Believing that Dickinson had gotten into a verbal altercation with another person and that shots had been fired, Sergeant

[2] The officers refused to show themselves for safety reasons.

Persnsteiner and Detective Apeland entered the house to search for an assault or domestic violence victim. They did not find anyone in Dickinson's home.

During the search, the officers entered the unlocked basement and found a loaded shotgun leaning against the back door, large grow lights, and numerous marijuana plants in plain view. They seized the shotgun, went back outside, and applied for a warrant to seize the marijuana. The officers continued to search for victims and walked around the house and peered into a truck parked nearby, but did not find anyone.

II. Procedure

The State charged Dickinson with manufacture of marijuana and second degree unlawful possession of a firearm. Dickinson moved to suppress the shotgun and marijuana plants as the fruits of an illegal warrantless search.

At the CrR 3.6 hearing, Deputy Johnson and Sergeant Pernsteiner testified that they understood from dispatch that the situation involved shots fired and a verbal dispute. Detective Apeland characterized the situation as a "disturbance." Deputy Johnson testified that he was under the impression that "verbal dispute" meant more than one party talking, but that it would not have made a difference to him if he knew only one voice was heard. Deputy Johnson stated that during the entire situation, he and the other officers always believed "that there would be more than one person there, because of the way it was reported." He also testified that the officers who searched the house did so for the safety of others. All three officers denied having first asked Dickinson to consent to the search.

Dickinson testified that (1) he had awakened in the middle of the night because his

neighbors had been slamming their doors; (2) he went outside, threw two rocks at a piece of aluminum to give his neighbors "a taste of their own medicine," slammed his door, and returned to bed; (3) he was awakened again by pounding on his house, but did not know that officers were present; and (4) after taking him into custody, one of the officers requested consent to search the house, which he (Dickinson) refused.

The trial court found that the officers had lawfully entered Dickinson's home under the community caretaking exception to the warrant requirement and denied his motion to suppress the evidence. Dickinson agreed to a bench trial based on stipulated facts. The trial court found him guilty of both counts.

Dickinson appeals.

ANALYSIS

I. Findings of Fact

Dickinson argues that substantial evidence does not support several of the trial court's findings of fact. We disagree.

A. Standard of Review

We uphold the trial court's findings of fact entered following a suppression hearing if substantial evidence supports them. *State v. Broadaway*, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). Evidence is substantial if it is sufficient to persuade a fair-minded, rational person that the finding is true. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), *overruled on other grounds by Brendlin v. California*, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007).

We view evidence in the light most favorable to the State. *State v. Gentry*, 125 Wn.2d

570, 596-97, 888 P.2d 1105, *cert. denied*, 516 U.S. 843 (1995). And we defer to the trier of fact on issues of conflicting testimony, witness credibility, and evidence persuasiveness. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004). We view the circumstances of a search as it appeared to the officers at the time. *State v. Leffler*, 142 Wn. App. 175, 182, 178 P.3d 1042 (2007).

We apply a harmless error standard to findings of fact that contain errors. *State v. Banks*, 149 Wn.2d 38, 43-46, 65 P.3d 1198 (2003). An error is harmless when it appears beyond a reasonable doubt that the challenged error did not contribute to the verdict obtained. *Banks*, 149 Wn.2d at 44.

B. Substantial Evidence

Dickinson first argues that substantial evidence does not support Findings of Fact 1 and 6 because the "verbal dispute" to which they refer[3] conflicts with the dispatcher's report, and Detective Apeland's description, of a "disturbance" involving only "one voice." Dickinson contends that Deputy Johnson and Sergeant Pernsteiner incorrectly described the incident as a "dispute." The officers testified that they believed someone was in danger because of a domestic violence-type dispute or disturbance. The officers believed that persons at Dickinson's home had been involved in a verbal altercation and that shots had been fired. We hold that this evidence is sufficient evidence to support Findings of Fact 1 and 6.

[3] Finding of Fact 1 states: "That on October 25, 2007, at 1:29 am, the Jefferson County 911 Dispatch Office received a report of three possible shots fired and a verbal dispute." Clerk's Papers (CP) at 3. Finding of Fact 6 states: "That all three deputies testified that they responded to a report of a verbal dispute with three possible shots fired." CP at 4.

Second, Dickinson argues that substantial evidence does not support Finding of Fact 2's statement that the 911 caller's spouse heard someone shout "put the f[***]ing *gun* down"[4] (emphasis added); Dickinson contends that the caller's spouse had actually heard someone say, "put the f[***]ing *thing* down." Br. of App. at 21 (emphasis added). Dickinson is correct about the distinction between "gun" and "thing." But even if we substitute "thing" for "gun" in the trial court's finding, the error is harmless. The purpose of Finding of Fact 2 was to emphasize that the officers were responding to a situation involving an altercation between more than one person, not to establish whether someone was told to put down a "gun" or a "thing."

Third, Dickinson argues that substantial evidence does not support Finding of Fact 5's statement that the 911 dispatcher "did not exaggerate the serious nature of the call" because the transcript does not show what the operator told the officers. We may supplement the trial court's written findings with its oral findings to the extent the oral decision does not contradict the written findings. *State v. Hinds*, 85 Wn. App. 474, 486, 736 P.2d 1135 (1997) (citation omitted). In its oral ruling, the trial court found that the dispatcher did not exaggerate the situation because the reporting party had stated that someone had fired three shots. This oral ruling is consistent with the 911 transcript. We hold, therefore, that substantial evidence supports Finding of Fact 5.

Fourth, Dickinson argues that substantial evidence does not support Finding of Fact 14's statement that Dickinson's response coming out of the house was "unreasonable"[5] because he testified that did not know the officers were law enforcement when he came out of his house. But

[4] Finding of Fact 2 states: "That the spouse of the reporting party heard someone yelling 'put the f[***]ing gun down.'" CP at 3.

[5] Finding of Fact 14 states: "That the response by Mr. Dickinson, even if he did not know why the deputies were present, was not a reasonable response to the Sheriff's Deputies." CP at 4.

in Finding of Fact 11, the trial court found not credible Dickinson's testimony that the officers had pounded on his house without announcing they were law enforcement, a determination that we do not reweigh. *Thomas*, 150 Wn.2d at 874-75. Accordingly, we hold that substantial evidence supports Finding of Fact 14.

Fifth, Dickinson argues that substantial evidence does not support Finding of Fact 15 because there is no evidence that he "ran" back into the house.[6] Dickinson is correct that no witness testified that he "ran" into the house. Instead, Deputy Johnson testified that Dickinson "reentered the house." Again, any error is harmless. The finding explained the sequence of events and Dickinson's unreasonable actions in response to police presence. Furthermore, the trial court did not base its ultimate conclusion—that the community caretaking exception applied—on whether Dickinson had run or walked back into his house.

Finally, Dickinson argues that substantial evidence does not support Finding of Fact 16 because it does not clarify what behavior contributed to the officers' concerns and the officers did not find any individuals in the house.[7] But the trial court did explain the behavior at issue in its oral ruling. The trial court explained that while the officers were investigating a report of a verbal dispute with shots having been fired, Dickinson emerged from his home with a gun and shouted profanities at the officers. As for Dickinson's argument that the officers found no one in the house, we base our analysis on the facts as they appeared to the officers at the time, not on the

[6] Finding of Fact 15 states: "That [Dickinson] ran back into the house after one of the deputies alerted the other deputies that [Dickinson] had a gun." CP at 5.

[7] Finding of Fact 16 states: "That [Dickinson's] behavior added to the concern for the safety of individuals in the home." CP at 5.

facts that ultimately evolved. *Leffler*, 142 Wn. App. at 182. We hold, therefore, that substantial evidence supports Finding of Fact 16.

II. Community Caretaking Exception

Dickinson next argues that the trial court erred in concluding that the officers' warrantless search of his home fell within the "community caretaking" exception to the warrant requirement. Again, we disagree.

A. Standard of Review

Warrantless searches and seizures are presumptively illegal and violate the Fourth Amendment unless an exception applies. *State v. Duncan,* 146 Wn.2d 166, 171-72, 43 P.3d 513 (2002). The State bears the burden of showing that one of those exceptions applies. *Duncan,* 146 Wn.2d at 172. The emergency exception recognizes the "community caretaking function of police officers, and exists so officers can assist citizens and protect property." *State v. Schlieker,* 115 Wn. App. 264, 270, 62 P.3d 520 (2003). This exception justifies a warrantless search when (1) the officer subjectively believes that someone needs assistance for health or safety reasons, (2) a reasonable person in the same situation would similarly believe there was a need for assistance, and (3) the need for assistance reasonably relates to the place searched. *Leffler*, 142 Wn. App. at 181-82 (citations omitted).

When analyzing these factors, we view the officer's actions as the situation appeared to the officer at the time. *Leffler*, 142 Wn. App. at 182. But the officer must be able to point to specific and articulable facts that provide reasonable justification for the warrantless injury. *State v. Davis*, 86 Wn. App. 414, 420, 937 P.2d 1110, *review denied*, 133 Wn.2d 1028 (1997) (citations omitted). We look to the totality of the circumstances. *Davis*, 86 Wn. App. at 420 (citing *State v. Bean*, 89 Wn.2d 467, 472, 572 P.2d 1102 (1978)).

B. Subjective Belief that Someone Needs Assistance

Dickinson challenges only the first element of the community caretaking exception, arguing that the officers had no subjective basis to believe that a specific person inside his home needed immediate help[8] because: (1) the shots fired occurred in a rural area where safe discharge of firearms is permitted, (2) the 911 caller reported hearing only one voice, (3) Dickinson told the officers that no one else had been in the house and they did not believe he had recently fired his gun, and (4) nothing in the record showed the shots originated from within the residence. These factual assertions do not undermine the trial court's conclusions.

Viewing the evidence in the light most favorable to the State, we hold that the findings of fact support the trial court's conclusions of law. *See Gentry*, 125 Wn.2d at 596-97. The dispatcher informed the officers that three shots had been fired and a verbal dispute had occurred. The reporting party's spouse had heard someone yell to put the "f[***]ing [thing] down." When the officers arrived, Dickinson was unreasonably combative and came out of his house with a shotgun,[9] which conduct did not dispel the officers' concerns, despite Dickinson's claims that no

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[8] Dickinson appears to be challenging conclusions of law 4 and 5:

> 4. That the Community Caretaking Exception does apply in this case;
> 5. That the searching officers subjectively believed that an emergency existed.

CP at 6.

[9] Findings of Fact 11 through 14 state:

> 11. That Mr. Dickinson's testimony was not credible when he said that all three officer's [sic] pounded on his house without announcing that they were with law enforcement;
> 12. That Mr. Dickinson responded to the knock on his house by exiting his home armed with a shotgun;
> 13. That [Dickinson] used profane language while yelling at the officers to "get away from here";

one was in the house.[10] Moreover, at the time the officers were approaching Dickinson's home, the 911 transcript showing that the reporting party heard only one voice was not available to them. On the contrary, as the trial court found, it appeared to the officers that more than one person had been involved in a "dispute" such that they subjectively believed someone in Dickinson's home needed assistance for health or safety reasons. Accordingly, these findings support the trial court's conclusion that a community caretaking exception to the warrant requirement justified the officers' initial entry into the house.

Dickinson also challenges Conclusions of Law 6, 7, and 9.[11] But he provides no argument that the officers' beliefs were not objectively reasonable or that they had no reason to associate the emergency with Dickinson's home. Nor does he argue that the officers' actions were pretextual. A party who fails to provide sufficient argument waives an assignment of error. *See* RAP 10.3(a)(6). Dickinson has waived these assignments of error. Thus, we do not further

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> 14. That the response by Mr. Dickinson, even if he did not know why the deputies were present, was not a reasonable response to the Sheriff's Deputies.

CP at 4.

[10] Conclusion of Law 8 states: "That based on [Dickinson's] actions, [he] was not in a position to assure the officers that no one was in the house who had been hurt." CP at 6.

[11] These conclusions state:

> 6. That a reasonable person in the similar circumstances would have thought that an emergency existed;
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> 7. That there was a reasonable basis to associate the emergency circumstances with the place searched;
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> . . . .
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> 9. That the deputies[']actions were consistent with their claimed motivations.

CP at 6.

consider them.

C. Least Intrusive Means

Finally, Dickinson argues that the officers had a duty to use the least intrusive means of performing the community caretaking function because (1) Article I, §7 of the Washington Constitution provides greater protection that the Fourth Amendment of the federal constitution, and (2) Article I, §7 is unconcerned with the reasonableness of a search. This argument fails for two reasons. First, Article I, §7 does not require officers to pursue the least intrusive means available. *State v. Mackey*, 117 Wn. App. 135, 139, 69 P.3d 375 (2003), *review denied*, 151 Wn.2d 1034 (2004) (holding that the means of investigation need not be the least intrusive available).[12] Second, requiring officers to pursue other less intrusive means of investigation would defeat the purpose of the community caretaking exception—to protect the citizens and property of Washington. *State v. Johnson*, 104 Wn. App. 409, 417-18, 16 P.3d 680, *review denied*, 143 Wn.2d 1024 (2001). Such requirement would defeat the point of the exception if, as Dickinson contends, police officers had to conduct an investigation, use a megaphone, call the house, or perform a records check before searching a home to determine whether there was a victim inside bleeding from a shotgun wound. Such delays could contribute to loss of life or property, which the community caretaking exception seeks to prevent. Thus, Dickinson's last argument also fails.

[12] *See also State v. Johnson*, 104 Wn. App. 409, 418, 16 P.3d 680, *review denied*, 143 Wn.2d 1024 (2001) (holding that if the three requirements for an emergency exception are met and the search is not a pretext for an investigation, no greater protection against an unreasonable search is needed).

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

Hunt, J.

We concur:

Houghton, P.J.

Bridgewater, J.